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United States District Court

----- DISTRICT OF SOUTH DAKOTA -----  
SOUTHERN DIVISION

**FILED**

**JUL 08 2008**

  
CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

**RECOMMENDED FINDINGS ON  
REVOCATION OF SUPERVISED  
RELEASE**

DARRIN JEROME DAVIS,

Defendant.

CASE NUMBER: CR. 99-40109

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This matter came before the court for hearing upon the Petition to Revoke Supervised Release (Doc. 65) on Tuesday, July 8, 2008. The defendant appeared in person and by his counsel, Assistant Federal Public Defender Tim Langley, while the United States of America appeared by Assistant United States Attorney, Connie Larson. Based upon the evidence adduced at the hearing, I hereby make the following recommended findings of fact and conclusions of law.

**Findings of Fact**

Defendant is on supervised release pursuant to General, Standard and Special Conditions of Supervised Release as contained in the Judgment in a Criminal Case filed on December 17, 1999 (Doc. 38).

**Allegation Numbered 1:**

A General Condition of the defendant's Conditions of Supervised Release required that "the defendant shall not commit another federal, state, or local crime."

Standard Condition No. 7 of the defendant's Conditions of Supervised Release required that "the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician."

Defendant admitted allegation numbered 1.

On December 1, 2007, at Sioux Falls, South Dakota, the defendant possessed cocaine and marijuana and committed the offenses of possession with a controlled substance, possession with intent to deliver a controlled substance, and possession of marijuana in violation of Standard Condition No. 7 and the General Conditions of the Conditions of Supervised Release.

**Allegations Numbered 2, 3, 4, and 5:**

Allegations numbered 2, 3, 4, and 5 were dismissed upon motion of the government and in the interests of justice.

**Conclusions of Law**

1. Failure to abide by the terms and conditions of supervised release provides a reasonable basis upon which to revoke supervised release.

2. Based upon the factual basis provided by the United States, the United States has proven by a preponderance of the evidence that the defendant has not met the conditions of his supervised release. See *United States v. Cotroneo*, 89 F.3d 510, 512 n.4 (8th Cir.), *cert. denied* 117 S.Ct. 533 (1996) and 18 U.S.C. § 3583(e)(3).

3. After conversing with the defendant personally in open court, it is the finding of the court that the defendant is fully competent and capable of entering an informed admission, that the defendant is aware of the nature of the charges and the consequences of the admission, and that the admission is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense. It is, therefore, my report and recommendation that defendant's supervised release be revoked.

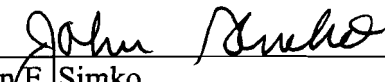
4. The United States Probation Office is hereby directed to prepare and submit to the United States District Court a supplemental pre-sentence investigation within twenty-one (21) days of the date of this report.

Notice to Parties

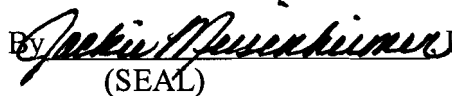
Any objections to these findings and conclusions must be served and filed within ten days of the date of service of this notice upon you. 28 U.S.C. §636(b)(1). If no objections are filed, the district court may adopt, reject, or modify these findings and conclusions. Moreover, the court may impose an appropriate sentence based upon these findings and conclusions following a hearing.

Dated this 8 day of July, 2008.

BY THE COURT:

  
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John E. Simko  
United States Magistrate Judge

ATTEST:  
JOSEPH HAAS, Clerk

By  Deputy  
(SEAL)